

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, DC 20554

DEC 16 5 14 PM '04

In the Matter of)

Request for Review)

Totowa Borough Public Schools
Totowa, New Jersey)

File No. SLD-265823

Schools and Libraries Universal Service
Support Mechanism)

CC Docket No. 02-6

ORDER**Adopted: December 15, 2004****Released: December 15, 2004**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Totowa Borough Public Schools, Totowa, New Jersey (Totowa).¹ Totowa seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) denying Totowa's Funding Year 2001 application for discounted services under the schools and libraries universal service mechanism on the grounds that Totowa violated the Commission's competitive bidding requirements.² For the reasons set forth below, we grant Totowa's Request for Review and remand its application to SLD for further consideration in light of this decision.

2. On December 8, 2000, Totowa submitted its FCC Form 470 to SLD for Funding Year 2001.³ In Block 1, Item 2 of the Form, Totowa entered "07/01/2000 - 06/30/2001" as the Funding Year, when it should have entered "07/01/2001 - 06/30/2002."⁴ Despite this error, on December 18, 2001, SLD notified Totowa that its Form 470 was completed properly and posted to SLD's website.⁵ Subsequently, Totowa submitted its FCC Form 471 referencing the defective Form 470.⁶ Nearly eight months later, on September 4, 2001, SLD sent Totowa a letter stating that Totowa did not file a Form 470 for Funding

¹ Letter from Colin J. Monahan, Totowa Borough Public Schools, to Federal Communications Commission, filed March 28, 2002 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. 54.719(c).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Colin J. Monahan, Totowa Borough Public Schools, dated February 8, 2002.

³ FCC Form 470, Totowa Board of Education, posted December 12, 2000 (Form 470).

⁴ *Id.*

⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Colin J. Monahan, Totowa Borough Public Schools, dated December 18, 2000.

⁶ FCC Form 471, Totowa Board of Education, submitted January 15, 2001.

Year 2001 and that its request for funding was therefore denied.⁷ In response, Totowa admitted to inserting the incorrect Funding Year on its Form 470, but argued that it was unaware of this error when it filed its Form 471.⁸ On February 8, 2002, SLD denied Totowa's appeal stating that Totowa's application did not comply with the competitive bidding requirements, because the establishing Form 470 was not posted to SLD's website for 28 days in Funding Year 2001.⁹

3. In the instant Request for Review, Totowa argues that it should not be penalized for a mistake SLD made in notifying Totowa that its Form 470 was complete.¹⁰ Totowa asserts that once it received SLD notification that its Form 470 was received and properly completed, it submitted the corresponding Form 471.¹¹ Totowa states that for eight months it believed its application was complete and only learned of the error in September 2001 when it received its Funding Commitment Decision Letter.¹² Totowa states that if SLD had notified Totowa of the error on December 18, 2001, rather than informing Totowa that the Form 470 was completed properly, Totowa would have been able to resubmit its Form 470 in time for SLD to post the Form, and for Totowa to wait 28 days before filing its Form 471 within the filing window.¹³

4. We find that SLD erred in notifying Totowa that SLD received a properly completed Form 470 for Funding Year 2001 when, in fact, incorrect dates were inserted in Block 1 of the Form. We also find that, consistent with previous decisions, SLD erred by unreasonably delaying its notification to Totowa of the problems with its Form 470.¹⁴ In particular, the period between December 8, 2000, when SLD received the Form 470, and September 4, 2001, when SLD mailed a notice to Totowa informing it of its failure to post a Form 470, constitutes an excessive delay by SLD that adversely affected Totowa's application. Had SLD informed Totowa of its mistake earlier, rather than informing Totowa that the

⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Colin J. Monahan, Totowa Borough Public Schools, dated September 4, 2001 (Funding Commitment Decision Letter).

⁸ Letter from Colin J. Monahan, Totowa Borough Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed September 28, 2001.

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Colin J. Monahan, Totowa Borough Public Schools, dated February 8, 2002. In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services. See 47 C.F.R. § 54.504(b); Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (September 1999) (Form 470 Instructions) at 2-3. The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant. *Id.*; 47 C.F.R. § 54.504(c).

¹⁰ Request for Review at 2.

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ *Id.* at 1.

¹⁴ See, e.g., *Request for Review by Council Bluffs Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. E007282, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 18836 (Com. Car. Bur. 1999) (finding that a waiver of the filing window was warranted because SLD delayed in posting applicant's FCC Form 470); *Request for Review by Lettie W. Jensen Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. 220549, 220586, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 18526 (Wireline Comp. Bur. 2003) (concluding that a notification delay of nearly two months was excessive).

Form 470 was completed properly, Totowa may have been able to resubmit its Form 470 early enough to comply with the 28-day competitive bidding requirement and then file its Form 471 before the filing window closed. We routinely encourage applicants to begin the application process as early as possible in order to deal with any problems that may arise. In this case, we find that SLD should have notified Totowa of the deficiency in the Form 470 in time for Totowa to submit an in-window Form 471 that complied with the competitive bidding rules.

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Totowa Borough Public Schools, on March 28, 2002, IS GRANTED, and this application is REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION



Vickie S. Robinson
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau